IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TESSA ENGLER, a single person, Appellant, v. CORPORATION OF THE CATHOLIC ARCHBISHOP OF SEATTLE, d/b/a THE ARCHDIOCESE OF SEATTLE, a Washington corporation, Respondent.	)	No. 63679-1-I DIVISION ONE UNPUBLISHED OPINION FILED: April 26, 2010

Appelwick, J — Tessa Engler appeals the trial court order dismissing her claims against the Corporation of the Catholic Archbishop of Seattle, d/b/a the Archdiocese of Seattle, under CR 12(b)(6) for failure to state a claim. We affirm.

FACTS

John Engler, Tessa's Engler's father, was sexually abused in the late 1960's and 1970's by two ordained priests while a student in St. Catherine's Parish of the Archdiocese of Seattle (Archdiocese). In 2005, Mr. Engler brought an action against the Archdiocese. His complaint included no claims for loss of consortium. The parties settled the lawsuit, and the settlement

included language that the release related solely to Mr. Engler's individual claims and did not address any claims for loss of consortium by his daughter or former wife.

In July 2008, Tessa Engler filed a complaint against the Archdiocese, alleging claims for negligent infliction of emotional distress, breach of fiduciary duty, equitable estoppel, and fraudulent concealment. A month later, Engler amended her complaint, limiting her claims to negligence. She alleged the following: as a consequence of the sexual abuse, her father suffered injury that left him unable to have a normal, healthy father-daughter relationship; since 2001 she had been unable to have any contact with her father, causing her injury; she only recently learned her father had been sexually abused; she was entitled to a normal, healthy relationship with her father, but because of the abuse she was deprived of this relationship; and she suffered harm as a result.

The Archdiocese moved to dismiss the complaint under CR 12(b)(6) for failure to state a claim. The Archdiocese primarily argued that Washington law does not recognize a claim for loss of consortium by an adult child who was not born at the time of injury to the parent. The trial court granted the Archdiocese's motion and dismissed Engler's complaint with prejudice.

Ms. Engler appeals.

DISCUSSION

Whether dismissal was appropriate under CR 12(b)(6) is a question of law that the court reviews de novo. San Juan County v. No New Gas Tax, a

Wash. Political Action Comm., 160 Wn.2d 141, 164, 157 P.3d 831 (2007). Under CR 12(b)(6), dismissal is appropriate only when it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would justify recovery. Burton v. Lehman, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). The court accepts as true the allegations in the plaintiff's complaint and any reasonable inferences therefrom. Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). Any hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support the plaintiff's claim. Bravo v. Dolsen Cos., 125 Wn.2d 745, 750, 888 P.2d 147 (1995).

Ms. Engler argues that she has alleged facts sufficient to support a claim for loss of consortium and that such a claim is legally cognizable. In support of her argument, she relies on three aspects of Washington law. First, she relies on RCW 4.16.340, which sets out a special discovery rule statute of limitations for victims of sexual abuse.[1] Second, she relies on Ueland v. Pengo Hydra-Pull Corp., 103 Wn.2d 131, 131–32, 691 P.2d 190 (1984), which held that subject to certain limitations, children have an independent cause of action for loss of parental consortium when a parent is injured through the negligence of another. In Ueland, two minor children brought a loss of consortium claim after

[1] RCW 4.16.340(1) allows a victim of childhood sexual abuse to sue the abuser for damages suffered as a result of the abuse "within the later of (1) three years of the abusive act; (2) three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the abusive act; or (3) three years of the time the victim discovered that the abusive act caused the injury for which the claim was brought. The statute further provides that the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen." Cloud v. Summers, 98 Wn. App. 724, 733–34, 991 P.2d 1169 (1999).

their father suffered severe and permanent mental and physical disabilities when he was struck by a metal cable during the course of employment as a lineman for Seattle City Light. Id. at 132. Third, Ms. Engler relies on Green v. A.P.C., 136 Wn.2d 87, 960 P.2d 912 (1998), which allowed a spouse's claim for loss of consortium when the injury to the other spouse occurred prior to the marriage. The court in Green stated, "With respect to Joshua Green's claim for loss of consortium, the rationale for the majority rule forbidding such claims for premarital injuries is fundamentally unfair in toxic exposure cases with latent injuries." Id. at 103.

Engler argues that putting these three lines of authority together, Washington law recognizes her cause of action for loss of consortium based on the sexual abuse her father suffered as a child, i.e., long before he was married or fathered a child, which resulted in his inability to have a normal, healthy father-daughter relationship, and thereby injured her. But, Engler has cited no Washington cases recognizing such a cause of action. Nor has she cited any case from any jurisdiction recognizing such a cause of action. We decline to do so. Ms. Engler's arguments are more properly directed to the legislature or our Supreme Court. See Roth v. Bell, 24 Wn. App. 92, 104, 600 P.2d 602 (1979) (if a right of action is to be granted to a minor child for injury to a parent, such a decision should follow after all voices have been heard and the legislative process has done its work).[2]

[2] We need not consider the Archdiocese's argument that as a matter of law Engler cannot establish proximate cause.

Considering the allegations in Engler's complaint and the reasonable inferences therefrom as true, Engler can prove no set of facts that would support recovery because her claim is legally insufficient. The trial court did not err in granting the Archdiocese's CR 12(b)(6) motion to dismiss.

Affirmed.

Appelwick, J.

WE CONCUR:

Dwyer, J.

Cox, J.